



CITY OF MILWAUKIE
Office of the City Recorder

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How to Make a Public Records Request

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Who has the Right to Inspect Public Records?

Oregon Revised Statute (ORS) 192.420 states that “every person” in Oregon has the right to inspect any **nonexempt** public record. The Attorney General’s 2005 *Public Records and Meetings Manual*, explains:

“Generally, the identity, motive, and need of the person requesting access to public records are irrelevant. Interested persons, news media representatives, business people seeking access for personal gain, busybodies on fishing expeditions, persons seeking to embarrass government agencies, and scientific researchers all stand on equal footing...”

“However, the identity and motive of the person seeking disclosure of a particular public record may be relevant in determining whether a record is exempt from disclosure under a conditional exemption. ORS 192.501 conditionally exempts certain records from disclosure ‘unless the public interest requires disclosure in the particular instance’... many of the exemptions listed in ORS 192.502 call for a balancing of privacy rights, governmental interests, and other confidentiality policies, on the one hand, and the public interest in disclosure on the other. In cases requiring a balancing of interests, the identity of the requestor and the use to be made of the record may be relevant in determining the weight of the public interest in disclosure.”

Who is Subject to the Public Records Law?

Any public body in the State of Oregon is subject to the public records law. In the City of Milwaukie (the City) this includes the City Council, boards and commissions, officers or agents, and departments. This also applies to a private contractor that is the “functional equivalent” of a public body as “records of a private entity that has contracted with a public body may be obtained under the Public Records Law from the public body if the public body has custody of copies of the records. In addition, the public body by rule or contract may require private bodies with which it deals to make pertinent records available for public inspection.”

What Records are covered by the Law?

ORS 192.410(4)(a) defines a public record to include “**any writing that contains information relating to the conduct of the public’s business**, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics.” This would include a record prepared outside the City that contained information being used to conduct the public’s business with records “owned, used or retained” by the public body. Not included would be a document prepared by a private entity, which is simply reviewed, but not retained, by the City.

ORS 192.410(6) further defines writing as “handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings.” “Writing” also includes information stored on a computer, microfiche, photographs, films, tape or videotape, and virtually any other method of recording information.

ORS 192.440(2) recognizes that public records may be in machine readable or electronic form, including e-mail. Although individual e-mails may be deleted, the e-mail may continue to exist on a back-up server or in another user’s inbox and remains a public record. A public body must make all nonexempt e-mail available for inspection and copying regardless of its storage location.

The Attorney General's *Public Records and Meetings Manual* states:

“Data in computer programs and printouts that is generated for use by a public body are public records. But, a public body is not obligated to perform specific computer runs or manipulate the data in the computer to satisfy a request by the public... The public's access to this information is increasingly dependent upon its retrieval by public bodies through the use of computer software or programs developed or acquired by the public bodies at public expense. We believe that the Public Records Law imposes a duty on public bodies to retrieve and make available nonexempt computer or electronically stored data or information, when requested, through the computer software or programs in use by the public body.”

This does not mean the City must create public records to respond to a public records request.

What to Expect when a Request is made.

The City recognizes and respects the public's right to public documents and the importance of maintaining orderly files to facilitate public access in an efficient and cost-effective manner. The City shall provide proper and reasonable opportunities for inspection and examination of the records during usual business hours if such request does not interfere with the regular discharge of duties.

All requests need to be in writing when practicable with the date, name, address, and signature of the person making the request or sufficient e-mail address. The request must contain, if known, a statement of sufficient specificity to determine the nature, content, and probable department in which the record is located.

A person making a public record request may personally inspect the requested document during normal business hours in the presence of a City staff member. Original public documents may not be taken out of the City's custody. The City shall not create any new documents or customize any existing documents in response to a records request.

If the public record is maintained in a machine readable or electronic form, the City shall provide a copy of the public record in the form requested, if available. The City will provide an opportunity for individuals with disabilities to request an alternative form.

Although the City needs to respond to a request, under the Oregon Public Records Law public bodies are not bound by the timeframes or other requirements of the Federal Freedom of Information Act. The City shall respond to a written public record request as soon as practicable and without unreasonable delay.

The City will establish a fee that is reasonably calculated to reimburse the City for the actual cost of making public records available, including hourly rates for employee services. A listing of fees is available on the City website under Finance **Fees and Charges**.

If a document contains exempt information, a copy will be provided with the exempt portion redacted. The cost of having legal assistance to redact material can be included in the fee charged.

A request that is extraordinary and significantly disrupts regular City duties will be charged whether copies are provided or not. The City may not establish a fee greater than \$25 unless the requestor is provided with written notification of the estimated amount and the requestor confirms they want the City to proceed. Prepayment shall be required if the amount of the request is greater than \$25.

Copies of public records may be furnished without cost or at a substantial reduction if the City Records Officer determines the waiver is in the public interest. The waiver or reduction request review will weigh the requestor's ability to pay and the possible financial hardship on the City that might arise from granting the waiver. A denied fee waiver or reduction requestor may appeal the decision to the district attorney.

Copies of routine materials personal to a requestor will be furnished without charge except for police reports.

Copies of routine materials requested by any Milwaukie elected official, appointed advisory board or representative of a recognized neighborhood association will be furnished without charge if the request relates to information needed to act in one's official capacity.

To make a Public Records Request, visit the Office of the City Recorder's online **Records Request** form or contact us by phone at 503-786-7502 or by e-mail at ocr@milwaukieoregon.gov.